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Date 2/25/94

Surname [REDACTED]

DOB [REDACTED]

JAN 6 1994

EIN: [REDACTED]  
Key District: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code. Based on the information submitted, we have concluded that you do not qualify for exemption under that section.

You were incorporated on [REDACTED]. You filed a Form 1023 on [REDACTED]. Your Articles of Incorporation state that your purposes are "to take all necessary or desirable actions to provide financial assistance or other benefits to [REDACTED] Members, including but not limited to drivers, crew members and participants in [REDACTED] racing events. and their families, who, as determined by the Board of Directors from time to time, are in need because of injuries, including those resulting in death, sustained in [REDACTED] racing events or related activities."

[REDACTED] is a corporation headquartered in [REDACTED], which sanctions auto racing events throughout the United States. This corporation is separate from you. Racing events are held throughout the U.S. from February to October of each year. You provide financial assistance to auto race car drivers or crew members and their families in the event of injury or death at [REDACTED] sprint car auto racing events. You were formed because auto race car drivers have difficulty obtaining sufficient insurance and because auto race car drivers often cannot afford the cost of insurance. Insurance provided by promoters of racing events is usually limited and does not provide for disability benefits.

You are funded in the following manner. Each promoter contributes \$[REDACTED] per day of racing. A contract between the promoter and [REDACTED] possibly requires promoters to contribute these amounts for insurance purposes. You also hold a benefit baseball game or raffle, which are usually held in conjunction with a major auto racing event. The benefit baseball games and raffles are organized by the wives of

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization will not be considered as operating exclusively for charitable purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations, in part, states that an organization is not organized or operated for exempt purposes unless it serves a public rather than a private interest. To meet this requirement, the organization must establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, or shareholders of the organization.

Rev. Rul. 67-5, 1967-1 C.B. 123, provides that a foundation was not entitled to exemption from Federal income tax under section 501(c)(3) of the Code because it was operated for a substantial non-exempt purpose and served the private interests of the creator and his family. The foundation was controlled by the creator's family and was operated to enable the creator and his family to engage in financial activities which were beneficial to them but detrimental to the charitable purposes of the foundation. As a result, the foundation's ownership of non-income producing assets prevented the foundation from carrying on a charitable program commensurate in scope with its financial resources.

Rev. Rul. 69-175, 1969-1 C.B. 149, holds that a nonprofit organization, formed by parents of pupils attending a private school, does not qualify for exemption under section 501(c)(3) of the Code. The organization provided school bus transportation for its members' children, enabling the participating parents to fulfill their individual responsibility of transporting their children to school. When a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest. Thus, the organization served a private rather than a public interest.

Rev. Rul. 75-199, 1975-1 C.B. 160, provides that a nonprofit organization is not exempt under section 501(c)(4) of the Code that restricted its membership to individuals of good moral character and health, belonging to a particular ethnic group and residing in a stated geographical area. The organization provided sick benefits to members and death benefits to their beneficiaries. The organization was a mutual benefit society as opposed to a social welfare organization since the benefit from the organization was for its members; there was only minor and incidental benefit to the community as a whole.

In Better Business Bureau of Washington, DC v. United States, 326 U.S. 279 (1945), it was held that the presence of a single non-exempt purpose, if substantial in nature, will preclude exemption under section 501(c)(3) of the Code, regardless of the number or importance of statutorily exempt purposes.

Church by Mail, Inc. v. Commissioner, 765 F.2d 1387 (9th Cir. 1985), determined that an organization was not exempt under section 501(c)(3) of the Code because it was operated for the substantial nonexempt purpose of providing a market for services of an advertising agency owned and controlled by ministers. Also, income from the church inured to the benefit of the ministers and their families.

Rev. Rul. 68-489, 1968-2 C.B. 210, provides that an organization did not jeopardize its exemption under section 501(c)(3) of the Code, even though it distributed its funds to nonexempt organizations, because it retained control and discretion over the use of the funds for section 501(c)(3) purposes. The organization maintained records establishing that the funds were used for section 501(c)(3) purposes.

Church in Boston v. Commissioner, 71 T.C. 102 (1978), held that an organization was not operated exclusively for charitable purposes and could not qualify for exemption from Federal income tax under section 501(c)(3) of the Code. The organization used substantial portions of its receipts to make grants of cash to individuals, including its officers, based upon no fixed criteria with no provision for repayment. The organization failed to develop criteria for disbursements of grants or to keep adequate records of each recipient.

You are operated for the substantial non-exempt purpose of providing benefits to your officers and directors. Four of your officers and directors are participants or family members of participants in [REDACTED] racing events, and thus are in a position to receive benefits from you. In fact, out of a total of three recipients of benefits from you, one recipient is a board member and a second recipient appears to be a family member of one of your officers. Only one recipient out of the three appears to be unrelated to any of your officers or directors.

Thus, like the organizations in Rev. Rul. 67-5 and Church by Mail, Inc. v. Commissioner, supra, you are operated for the substantial nonexempt purpose of benefiting your officers and directors, and not exclusively for charitable purposes. This constitutes the serving of substantial private benefit.

In addition, Rev. Rul. 69-175, supra, states that when a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest. You are similar to the organization described in Rev. Rul. 69-175, supra, in that your purpose is to provide benefits for your members. Thus, you are serving a private as opposed to a public interest. Also, although Rev. Rul. 75-199, supra, deals with the question

[REDACTED]

of exemption under section 501(c)(4) of the Code, it is helpful in analyzing the mutual benefit aspect of your organization. Like the organization described in Rev. Rul. 75-199, supra, you are operated as a mutual benefit society as opposed to furthering social welfare since your benefits are only for your members. Your activities provide only minor and incidental benefit to the community as a whole.

Finally, Rev. Rul. 68-489, supra, concludes that an organization that distributes funds to nonexempt organizations must retain control and discretion over the use of the funds and maintain records establishing that the funds were used for exempt purposes. In Church in Boston, supra, the Tax Court concluded that an organization had to establish that it would meet this requirement in order to qualify for exemption under section 501(c)(3) of the Code. You have no application process for benefits, and no set method for determining amounts of benefits. Rather, your board of directors determines recipients as well as amounts of benefits. Based on your lack of criteria for distributing funds, and your failure to control the use of funds, you have failed to establish that your purported charitable distributions meet the criteria in Rev. Rul. 64-489.

Accordingly, you do not qualify for exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are not deductible under section 170 of the Code. You are required to file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have the right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

You will expedite our receipt of your protest statement by using the following address on the envelope:

[REDACTED]  
Internal Revenue Service  
1111 Constitution Ave., N.W.  
Washington, D.C. 20224

[REDACTED]

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the U.S. Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status should be addressed to that office. If you want the matter reopened at a later time, you must pay a new user fee (see Revenue Procedure 93-23, 1993-19 I.R.B. 6). The appropriate State officials will be notified of this action in accordance with section 6104(c) of the Code.

Sincerely yours,

[REDACTED]  
[REDACTED]  
Chief, Exempt Organizations  
Rulings Branch

[REDACTED]  
Attn: EO Group  
[REDACTED]

	Initiator	Reviewer	Reviewer	Reviewer	Reviewer
Code	[REDACTED]	[REDACTED]			
Surname	[REDACTED]	[REDACTED]			
Date	1/5/94	1-5-94			